

Deborah Bailey-Wells (SBN 114630)
dbaileywells@klnng.com
Ramiz I. Rafeedie (SBN 215070)
rrafeedie@klnng.com
KIRKPATRICK & LOCKHART LLP
4 Embarcadero Center, 10th Floor
San Francisco, CA 94111-4106
Telephone: (415) 249-1000
Fax: (415) 249-1001

Of Counsel
Patrick J. McElhinny
pmcelhinny@klng.com
KIRKPATRICK & LOCKHART LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222-2312
Telephone: (412) 355-6500
Fax: (412) 355-6501

Attorneys for Defendant
BLACK BOX CORPORATION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TURN-LUCKILY INTERNATIONAL, INC.,
d/b/a TOTAL TECHNOLOGIES, LTD., a
California Corporation,

Case No. 03-5913-JSW

STIPULATED PROTECTIVE ORDER

Complaint Filed: December 31, 2003

Trial Date: None

BLACK BOX CORPORATION, a California Corporation,

Defendant.

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation would be
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter
6 the following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords extends only to the limited information or items that are entitled
9 under the applicable legal principles to treatment as confidential. The parties further
10 acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order
11 creates no entitlement to file confidential information under seal; Civil Local Rule 79-5
12 sets forth the procedures that must be followed and reflects the standards that will be
13 applied when a party seeks permission from the court to file material under seal.

14 2. DEFINITIONS

15 2.1 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and outside counsel (and their support staff).

17 2.2 Disclosure or Discovery Material all terms or information,
18 regardless of the medium or manner generated, stored, or maintained (including,
19 among other things, testimony, transcripts, or tangible things) that are produced or
20 generated in disclosures or responses to discovery in this matter.

21 2.3 “Confidential” Information or Items: information (regardless of how
22 generated, stored maintained) or tangible things that qualify for protection under
23 standards developed under F.R.Civ.P. 26(c).

24 2.4 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 2.5 Producing Party: a Party or non-party that produces Disclosure or
27 Discovery Material in this action.

1 2.6. Designating Party: a Party or non-party that designates information
2 or items that it produces or in responses to discovery as "Confidential."

3 2.7 Protected Material: any Disclosure or Discovery Material that is
4 designated as "Confidential."

5 2.8 Outside Counsel: attorneys who are not employees of a Party but
6 who are retained to represent or advise a Party in this action.

7 2.9 House Counsel: attorneys who are employees of a Party.

8 2.10 Counsel (without qualifier): Outside Counsel and House Counsel
9 (as well as their support staffs).

10 2.11. Expert: a person with specialized knowledge or experience in a
11 matter pertinent to the litigation who has been retained by a Party or its counsel to serve
12 as an expert witness or as a consultant in this action and who is not a past or a current
13 employee of a Party or of a competitor of a Party's and who, at the time of retention, is
14 not anticipated to become an employee of a Party or a competitor of a Party's. This
15 definition includes a professional jury or trial consultant retained in connection with this
16 litigation.

17 2.12 Professional Vendors: persons or entities that provide litigation
18 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
19 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
20 their employees and subcontractors.

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected
23 Material (as defined above), but also any information copied or extracted therefrom, as
24 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
25 conversations, or presentations by parties or counsel to or in court or in other settings
26 that might reveal Protected Material.

1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed
3 by this Order shall remain in effect until a Designating Party agrees in writing or a court
4 order otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for
7 Protection. Each Party or non-party that designates information or items for protection
8 under this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. A Designating Party must take care to
10 designate for protection only those parts of material, documents, items, or oral or written
11 communications that qualify – so that other portions of the material, documents, items,
12 or communications for which protection is not warranted are not swept unjustifiably
13 within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited.
15 Designations that are shown to be clearly unjustified, or that have been made for an
16 improper purpose (e.g., to unnecessarily encumber or retard the case development
17 process, or to impose unnecessary expenses and burdens on other parties), expose the
18 Designating Party to sanctions.

19 If it comes to a Party's or a non-party's attention that information or items
20 that it designated for protection do not qualify for protection at all, or do not qualify for
21 the level of protection initially asserted, that Party or non-party must promptly notify all
22 other parties that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided
24 in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
25 stipulated or ordered, material that qualifies for protection under this Order must be
26 clearly so designated before the material is disclosed or produced.

27 Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the legend "CONFIDENTIAL" at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony. When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceedings is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought. Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than
documentary, and for any other tangible items, that the Producing Party affix in a
prominent place on the exterior of the container or containers in which the information or
item is stored the legend "CONFIDENTIAL." If only portions of the information or item
warrant protection, the Producing Party, to the extent practicable, shall identify the
protected portions.

5.3 Inadvertent Failures to Designate. Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “Confidential” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring,

1 the challenging Party must explain the basis for its belief that the confidentiality
2 designation was not proper and must give the Designating Party an opportunity to
3 review the designated material, to reconsider the circumstances, and, if no change in
4 designation is offered, to explain the basis for the chosen designation. A challenging
5 Party may proceed to the next stage of the challenge process only if it has engaged in
6 this meet and confer process first.

7 6.3 Judicial Intervention. A Party that elects to press a challenge to a
8 confidentiality designation after considering the justification offered by the Designating
9 Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil
10 Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in
11 detail the basis for the challenge. Each such motion must be accompanied by a
12 competent declaration that affirms that the movant has complied with the meet and
13 confer requirements imposed in the preceding paragraph and that sets forth with
14 specificity the justification for the confidentiality designation that was given by the
15 Designating Party in the meet and confer dialogue.

16 The burden of persuasion in any such challenge proceeding shall
17 be on the Designating Party. Until the court rules on the challenge, all parties shall
18 continue to afford the material in question the level of protection to which it is entitled
19 under the Producing Party's designation.

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material
22 that is disclosed or produced by another Party or by a non-party in connection with this
23 case only for prosecuting, defending, or attempting to settle this litigation. Such
24 Protected Material may be disclosed only to the categories of persons and under the
25 conditions described in this Order. When the litigation has been terminated, a Receiving
26 Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at
2 a location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or term designated CONFIDENTIAL only
7 to:

8 (a) the Receiving Party's Outside Counsel of record in this
9 action, as well as employees of said Counsel to whom it is reasonably necessary to
10 disclose the information for this litigation and who have signed the "Agreement to Be
11 Bound by Protective Order" that is attached hereto as Exhibit A;

12 (b) the officers, directors, and employees (including House
13 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
14 litigation and who have signed the "Agreement to Be Bound by Protective Order"
15 (Exhibit A);

16 (c) experts (as defined in this Order) of the Receiving Party to
17 whom disclosure is reasonably necessary for this litigation and who have signed the
18 "Agreement to Be Bound by Protective Order" (Exhibit A);

19 (d) the Court and its personnel;

20 (e) court reporters, their staffs, and professional vendors to
21 whom disclosure is reasonably necessary for this litigation and who have signed the
22 "Agreement to Be Bound by Protective Order" (Exhibit A);

23 (f) during their depositions, witnesses in the action to whom
24 disclosure is reasonably necessary and who have signed the "Agreement to Be Bound
25 by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits
26 to depositions that reveal Protected Material must be separately bound by the court

1 reporter and may not be disclosed to anyone except as permitted under this Stipulated
2 Protective Order.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
4 IN OTHER LITIGATION.

5 If a Receiving Party is served with a subpoena or an order issued in other
6 litigation that would compel disclosure of any information or items designated in this
7 action as "CONFIDENTIAL," the Receiving Party must so notify the Designating Party,
8 in writing (by fax, if possible) immediately and in no event more than three court days
9 after receiving the subpoena or order. Such notification must include a copy of the
10 subpoena or court order.

11 The Receding Party also must immediately inform in writing the Party who
12 caused the subpoena or order to issue in the other litigation that some or all the material
13 covered by the subpoena or order is the subject of this Protective Order. In addition,
14 the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to
15 the Party in the other action that caused the subpoena or order to issue.

16 The purpose of imposing these duties is to alert the interested parties to
17 the existence of this Protective Order and to afford the Designating Party in this case an
18 opportunity to try to protect its confidentiality interests in the court from which the
19 subpoena or order issued. The Designating Party shall bear the burdens and the
20 expenses of seeking protection in that court of its confidential material – and nothing in
21 these provisions should be construed as authorizing or encouraging a Receiving Party
22 in this action to disobey a lawful directive from another court.

23 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
27 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
28

1 all copies of the Protected Material, (c) inform the person or persons to whom
 2 unauthorized disclosures were made of all the terms of this Order, and (d) request such
 3 person or persons to execute the "Acknowledgement and Agreement to Be Bound" that
 4 is attached hereto as Exhibit A.

5 10. FILING PROTECTED MATERIAL. Without written permission from the
 6 Designating Party or a court order secured after appropriate notice to all interested
 7 persons, a Party may not file in the public record in this action any Protected Material.
 8 A Party that seeks to file under seal any Protected Material must comply with Civil Local
 9 Rule 79-5.

10 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by
 11 the Producing Party, within sixty days after the final termination of this action, each
 12 Receiving Party must return all Protected Material to the Producing Party. As used in
 13 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
 14 summaries or any other form of reproducing or capturing any of the Protected Material.
 15 With permission in writing from the Designating Party, the Receiving Party may destroy
 16 some or all of the Protected Material instead of returning it. Whether the Protected
 17 Material is returned or destroyed, the Receiving Party must submit a written certification
 18 to the Propounding Party (and, if the same person or entity, to the Designating Party) by
 19 the sixth day deadline that identifies (by category, where appropriate) all the Protected
 20 Material that was returned or destroyed and that affirms that the Receiving Party has
 21 not retained any copies, abstracts, compilations, summaries or other forms of
 22 reproducing or capturing any of the Protected Material. Notwithstanding this provision,
 23 Counsel are entitled to retain an archival copy of all pleadings, motion papers,
 24 transcripts, legal memoranda, correspondence or attorney work product, even if such
 25 materials contain Protected Material. Any such archival copies that contain or constitute
 26 Protected Material remain subject to this Protective Order as set forth in Section 4
 27 (DURATION), above.

12. MISCELLANEOUS.

12.1 Right to Further Relief. Nothing in this Order abridges the
right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry
of this Protective Order no Party waives any right it otherwise would have to object to
disclosing or producing any information or item on any ground not addressed in this
Stipulated Protective Order. Similarly, no Party waives any right to object on any
ground to use in evidence of any of the material covered by this Protective Order.

IT IS STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: _____ /s/
Duncan Palmatier
Attorney for Plaintiff
Turn-Luckily International, Inc.
dba Total Technologies, Ltd.

DATED: _____ /s/
Ramiz Rafeedie
Attorney for Defendants
Black Box Corporation

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: May 31, 2005 /s/ Jeffrey S. White
Jeffrey S. White
United States District Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3

4 I, _____ [print or type full name], of

5 _____ [print or type full address], declare under penalty of perjury that I

6 have read in its entirety and understand the Stipulated Protective Order that was issued by

7 the United States District Court for the Northern District of California on [date] in the case of

8 Stipulated Protective Order Case No. C 03-5913-JSW. I agree to comply with and to be

9 bound by all the terms of this Stipulated Protective Order and I understand and

10 acknowledge that failure to so comply could expose me to sanctions and punishment in the

11 nature of contempt. I solemnly promise that I will not disclose in any manner any

12 information or item that is subject to this Stipulated Protective Order to any person or entity

13 except in strict compliance with the provisions of this Order.

14 I hereby appoint _____ [print or type full name] of

15 _____ [print or type full address and telephone number] as my

16 California agent for service of process in connection with this action or any proceedings

17 related to enforcement of this Stipulated Protective Order.

18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____
21 [printed name]

22 Signature: _____
23 [signature]